

DISQUALIFYING EVENTS SUMMARY (Draft #3)
SJ7 Workgroup
April 2008

During the February 2008 meeting the department presented a summary/recommendation document identifying and defining the crimes which would constitute disqualifying events for Montana. This document was the result of the workgroup activities from the December 2007 meeting and a subcommittee which met in January 2008.

During the February 2008 SJ7 workgroup meeting, several members voiced concern over the number of permanently identified disqualifying crimes and requested that the department again review the information; and in doing so, specifically requested that the department obtain assistance from the Department's legal staff, Department of Justice and others who have knowledge in this area of criminology.

As requested, department staff convened a second subcommittee which comprised of representatives from Department of Justice, Adult Protective Services and QAD staff members. Prior to the subcommittee meeting, DPHHS legal staff reviewed the list of crimes and identified the extent of penalty for those crimes—whether the crime could be charged as a Felony or Misdemeanor. Additionally, department legal staff researched other statutes which might contain crimes pertinent to the work of the SJ7 workgroup.

With this preparation complete, the second subcommittee began work and discussion on March 11, 2008. The subcommittee focused its attention in three distinct areas:

- (1) Crimes which could be considered Permanent Disqualifiers;
- (2) Crimes which could be 'aged out' with either a 5 or 10 year time frame; and
- (3) Identification of crimes which should not be considered.

Additionally, the subcommittee decided that that in order to make this a tenable task, the focus should be limited to crimes which have been designated as ***felonies***. Misdemeanor crimes would not be considered at this time. * In Montana, a crime is considered a felony if the sentence imposed upon conviction is imprisonment in a state prison for a term exceeding one year or if the sentence results in death.

The subcommittee--using only those crimes designated as felonies--has made recommendations as to which crimes should be considered permanent disqualifiers as well as those crimes which should be considered 'aged out offenses' with time frames of disqualification existing for 5 or 10 year periods. The attached document shows those recommendations.

The subcommittee also considered the discussions from the workgroup surrounding the authority to enforce the identified disqualifiers—should they be listed in statute, or in administrative rule? Consistent with the discussions of the SJ7 Workgroup, the subcommittee concurred and further recommends that all crimes designated as permanent disqualifiers be listed in statute, while the crimes designated as 'aged out' should be set in administrative rule.

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Montana Crimes	Felony/Misdemeanor	Permanent Disqualifier	Aged out offenses	Not Considered
Chap 5 -- Offenses Against a Person				
PART 1 Homicide				
45-5-102. Deliberate homicide		X		
45-5-103. Mitigated deliberate homicide		X		
45-5-104. Negligent homicide			10 YRS	
45-5-105. Aiding or soliciting suicide		X		
45-5-106. Vehicular homicide while under influence			10 YRS	
PART 2 Assault and related offenses				
45-5-201. Assault	MISDEMEANOR			
45-5-202. Aggravated Assault		X		
45-5-203. Intimidation		X		
45-5-204. Mistreating prisoners		X		
45-5-205. Negligent vehicular assault				
(w/o serious bodily injury)	MISDEMEANOR		5 YRS	
(causing serious bodily injury)			10 YRS	
45-5-206. Partner or family member assault				
(first offense)	MISDEMEANOR			
(second offense)	MISDEMEANOR			
(third or subsequent offense)		X		
45-5-207. Criminal endangerment			5 YRS	
45-5-208. Negligent endangerment	MISDEMEANOR			
45-5-209. Partner or family member assault -- no contact order	MISDEMEANOR			
45-5-210. Assault on peace officer or judicial officer				
(w/o serious bodily injury)		X		
(causing serious bodily injury)		X		
45-5-211. Assault upon sports official	MISDEMEANOR			
45-5-212. Assault on minor		X		
45-5-213. Assault with weapon		X		
45-5-214. Assault with bodily fluid	MISDEMEANOR			
45-5-220. Stalking				
(first offense)	MISDEMEANOR			
(second or subsequent offense)		X		
45-5-221. Malicious intimidation or harassment relating to civil or human rights		X		
45-5-223. Surreptitious visual observation or recording				
(place of residence first offense)	MISDEMEANOR			
(place of residence second offense)	MISDEMEANOR			
(place of residence third or subsequent offense)		X		
(public establishment - adult)	MISDEMEANOR			
(public establishment - minor)		X		
PART 3 Kidnapping				
45-5-301. Unlawful restraint	MISDEMEANOR			
45-5-302. Kidnapping		X		
45-5-303. Aggravated kidnapping		X		
45-5-304. Custodial interference			5 YRS	
45-5-305. Subjecting another to involuntary servitude		X		
(including aggravated kidnapping, sexual intercourse w/o consent or deliberate homicide)		X		
45-5-306. Trafficking of persons for involuntary servitude		X		
(including aggravated kidnapping, sexual intercourse w/o consent or deliberate homicide)		X		
PART 4 Robbery				
45-5-401. Robbery		X		
PART 5 Sexual Crimes				
45-5-502. Sexual Assault	MISDEMEANOR			
(victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury)			10 YRS	
45-5-503. Sexual intercourse without consent		X		
45-5-504. Indecent exposure				
(first offense)	MISDEMEANOR			
(second offense)	MISDEMEANOR			
(third or subsequent offense)			5 YRS	
45-5-505. Deviate sexual conduct	unconstitutional law			
45-5-507. Incest				

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(victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury)		X		
* there are several different sentencing guidelines, but the minimum is 2 years and thus a felony				
PART 6 Offenses Against the Family				
45-5-601. Prostitution	MISDEMEANOR			
(prostitute client first offense)	MISDEMEANOR			
(prostitute client second or subsequent offense)			5 YRS	
(prostitute under 12 and client over 18)		X		
45-5-602. Promoting prostitution		X		
(prostitute under 12 and client over 18)		X		
45-5-603. Aggravated promotion of prostitution		X		
(prostitute under 18)		X		
(prostitute under 12 and client over 18)		X		
45-5-611. Bigamy	MISDEMEANOR			
45-5-612. Marrying a bigamist	MISDEMEANOR			
45-5-621. Nonsupport	MISDEMEANOR			
(aggravated nonsupport)			5 YRS	
45-5-622. Endangering welfare of children	MISDEMEANOR			
(3) Methamphetamine Endangerment)			10 YRS	
45-5-623. Unlawful transactions with children	MISDEMEANOR			
45-5-624. Unlawful attempt to purchase or possession of intoxicating substance	MISDEMEANOR			
45-5-625. Sexual abuse of children		X		
(victim under 16)		X		
(possession of materials)		X		
(victim under 12 and offender over 18)		X		
45-5-626. Violation of order of protection		X		
(first and second offense)	MISDEMEANOR			
(third or subsequent offense)			10 YRS	
45-5-627. Ritual abuse of minor				
(first offense)		X		
(second or subsequent offense)		X		
45-5-631. Interference with parent-child contact	MISDEMEANOR			
45-5-632. Aggravated interference with parent-child contact	MISDEMEANOR			
45-5-634. Parenting interference			5 YRS	
45-5-637. Tobacco possession or consumption by persons under 18 years of age prohibited	MISDEMEANOR			
Chap 6 -- Offenses Against Property				
PART 1 Criminal Mischief and Arson				
45-6-101. Criminal mischief	MISDEMEANOR			
(injures or kills animal or causes a substantial interruption of public services)			5 YRS	
45-6-102. Negligent Arson	MISDEMEANOR			
(places person in danger of serious bodily injury or death)		X		
45-6-103. Arson		X		
45-6-104. Desecration of capitol, place of worship, cemetery, or public memorial	MISDEMEANOR			
(greater than \$1,000 in damages)			5 YRS	
45-6-105. Criminal destruction of or tampering with communication device	MISDEMEANOR			
PART 2 Criminal trespass and burglary				
45-6-202. Criminal trespass to vehicles	MISDEMEANOR			
45-6-203. Criminal trespass to property	MISDEMEANOR			
45-6-204. Burglary		X		
(aggravated burglary)		X		
45-6-205. Possession of burglary tools	MISDEMEANOR			
PART 3 Theft and Related Offenses				
45-6-301. Theft	MISDEMEANOR			
(exceeding \$1,000 or of animal or of ammonia for manufacturing drugs)			5 YRS	
(exceeding \$10,000)		X		
45-6-302. Theft of lost or mislaid property	MISDEMEANOR			
45-6-303. Offender's Interest in the property (NOT A CRIME)				
45-6-305. Theft of labor or services or use of property	MISDEMEANOR			

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45-6-306. Obtaining communication services with intent to defraud (NOT A CRIME)				
45-6-307. Aiding the avoidance of telecommunications charges	MISDEMEANOR			
45-6-308. Unauthorized use of motor vehicles	MISDEMEANOR			
45-6-309. Failure to return rented or leased personal property (exceeding \$1,000)	MISDEMEANOR		5 YRS	
45-6-311. Unlawful use of a computer (exceeding \$1,000)	MISDEMEANOR			X
45-6-312. Unauthorized acquisition or transfer of food stamps (exceeding \$1,000)	MISDEMEANOR			X
45-6-313. Medicaid fraud (first & second offense)	MISDEMEANOR			
(third or subsequent offense)	MISDEMEANOR			
(exceeding \$1,000)		X		
45-6-314. Theft by disposal of stolen property	MISDEMEANOR			
45-6-315. Defrauding creditors	MISDEMEANOR			
45-6-316. Issuing a bad check (exceeding \$1,000 or part of common scheme)	MISDEMEANOR		5 YRS	
45-6-317. Deceptive practices (exceeding \$1,000 or part of common scheme)	MISDEMEANOR		5 YRS	
45-6-318. Deceptive business practices	MISDEMEANOR			
45-6-319. Chain distributor schemes (second offense)	MISDEMEANOR		5 YRS	
45-6-325. Forgery (exceeding \$1,000 or part of common scheme)	MISDEMEANOR	X		
46-6-326. Obscuring the identity of a machine	MISDEMEANOR			
46-6-327. Illegal branding or altering or obscuring a brand				X
46-6-332. Theft of identity (exceeding \$1,000)	MISDEMEANOR	X		
46-6-341. Money laundering (exceeding \$1,000 or part of common scheme)	MISDEMEANOR			X
Chap 7 -- Offenses Against Public Administration				
PART 1 Bribery and Corrupt Influence				
45-7-101. Bribery in official and political matters				X
45-7-102. Threats and other improper influence in official and political matters				X
45-7-103. Compensation for past official behavior	MISDEMEANOR			
45-7-104. Gifts to public servants by persons subject to their jurisdiction	MISDEMEANOR			
PART 2 Perjury and Other Falsification in Official Matters				
45-7-201. Perjury				X
45-7-202. False swearing	MISDEMEANOR			
45-7-203. Unsworn falsification to authorities	MISDEMEANOR			
45-7-204. False alarms to agencies of public safety	MISDEMEANOR			
45-7-205. False reports to law enforcement authorities	MISDEMEANOR			
45-7-206. Tampering with witnesses and informants				X
45-7-207. Tampering with or fabricating physical evidence				X
45-7-208. Tampering with public records or information				X
45-7-209. Impersonation of public servant				X
45-7-210. False claim to public agency (exceeding \$1,000 or part of common scheme)	MISDEMEANOR			
PART 3 Obstructing Governmental Objectives				
45-7-301. Resisting arrest	MISDEMEANOR			
45-7-302. Obstructing peace officer or other public servant	MISDEMEANOR			
45-7-303. Obstructing justice	MISDEMEANOR			
45-7-304. Failure to aid a peace officer	MISDEMEANOR			
45-7-305. Compounding a felony	MISDEMEANOR			
45-7-306. Escape (after being charged w/ or convicted of felony)				X
(use of threat of force or physical violence)				X
45-7-307. Transferring illegal articles -- unauthorized communication (not weapon or drug; person not in prison)	MISDEMEANOR			
(not weapon or drug; person in prison)	MISDEMEANOR			

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(drug; person in prison)				X
(weapon; person in prison)				X
45-7-308. Bail-jumping	MISDEMEANOR			
(in connection with felony)				X
45-7-309. Criminal contempt	MISDEMEANOR			
PART 4 Official Misconduct				
45-7-401. Official Misconduct	MISDEMEANOR			
PART 5 Employer Misconduct				X
45-7-501. Employer Misconduct				X
Chap 8 -- Offenses Against Public Order				
PART 1 Conduct Disruptive of Public Order				
45-8-101. Disorderly Conduct	MISDEMEANOR			
45-8-102. Failure of disorderly persons to disperse	MISDEMEANOR			
45-8-103. Riot	MISDEMEANOR			
(while incarcerated)				X
45-8-104. Incitement to riot	MISDEMEANOR			
(while incarcerated)				X
45-8-105. Criminal incitement				X
45-8-106. Bringing armed men into the state				X
45-8-109. Civil disorder -- prohibited activities				X
45-8-110. Obstructing health care facility access	MISDEMEANOR			
45-8-111. Public nuisance	MISDEMEANOR			
45-8-112. Action to abate a public nuisance (NOT A CRIME)				
45-8-113. Creating a hazard	MISDEMEANOR			
45-8-114. Failure to yield party line	MISDEMEANOR			
45-8-115. Illegal posting of state and federal line	MISDEMEANOR			
45-8-116. Funeral picketing -- penalties	MISDEMEANOR			
PART 2 Offensive, indecent and inhumane conduct				
45-8-201. Obscenity	MISDEMEANOR			
45-8-208. Penalties for 45-8-206. Public display or dissemination of obscene material to minors	MISDEMEANOR			
45-8-209. Harming a police dog -- penalty	MISDEMEANOR			
45-8-210. Causing animals to fight -- owners, trainers, and spectators				X
45-8-211. Cruelty to animals -- exceptions	MISDEMEANOR			
(second or subsequent offense or aggravated)			10 YRS	
45-8-212. Criminal defamation	MISDEMEANOR			
45-8-213. Privacy in communications	MISDEMEANOR			
(second offense)	MISDEMEANOR			
(third or subsequent offense)				X
45-8-214. Bribery in contests				X
45-8-215. Desecration of flags				X
45-8-216. Unlawful automated telephone solicitation	MISDEMEANOR			
45-8-217. Aggravated animal cruelty			10 YRS	
45-8-220. Criminal invasion of personal privacy	MISDEMEANOR			
PART 3 Weapons				
45-8-303. Possession or use of machine gun in connection with a crime				X
45-8-304. Possession or use of a machine gun for offensive purpose				X
45-8-305. Presumption of offensive or aggressive purpose (NOT A CRIME)				
45-8-313. Unlawful possession of firearm by convicted person	no statutory penalty			
45-8-314. Lifetime firearms supervision of certain convicted person (NOT A CRIME)				
45-8-316. Carrying concealed weapons	MISDEMEANOR			
(second offense)				X
45-8-318. Possession of deadly weapon by prisoner or youth in facility				X
45-8-327. Carrying a concealed weapon while under the influence	MISDEMEANOR			
45-8-328. Carrying a concealed weapon in prohibited place	MISDEMEANOR			
45-8-331. Switchblade knives	MISDEMEANOR			
45-8-333. Reckless or malicious use of explosives	MISDEMEANOR			
45-8-334. Possession of a destructive device				X
45-8-335. Possession of explosives				X
45-8-336. Possession of a silencer				X

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45-8-339. Carrying firearms on trains -- penalty	MISDEMEANOR			X
45-8-340. Sawed-off firearm (second offense)	MISDEMEANOR			X
45-8-361. Possession or allowing possession of weapon in school building	MISDEMEANOR			
Chap 9 - Dangerous Drugs				
PART 1 Offenses involving Dangerous Drugs				
45-9-101. Criminal distribution of dangerous drugs			10 YRS	
45-9-102. Criminal possession of dangerous drugs marijuana and anabolic steroids	//////////////////////////////////// MISDEMEANOR			
opiate			5 YRS	
marijuana (second offense)			5 YRS	
not otherwise provided			5 YRS	
45-9-103. Criminal possession with intent to distribute opiate			5 YRS	
not otherwise provided			5 YRS	
45-9-104. Fraudulently obtaining dangerous drugs (second offense)			10 YRS 10 YRS	
45-9-105. Altering labels on dangerous drugs	MISDEMEANOR			
45-9-107. Criminal possession of precursors to dangerous drugs			5 YRS	
45-9-109. Criminal distribution of dangerous drugs on or near school property			10 YRS	
45-9-110. Criminal production or manufacture of dangerous drugs			10 YRS	
45-9-112. Criminal distribution of imitation dangerous drug (distribution to person over 18)			10 YRS	
(distribution to person under 18)			10 YRS	
45-9-113. Criminal possession of imitation dangerous drug with the purpose to distribute			10 YRS	
45-9-114. Criminal advertisement of imitation dangerous drug			10 YRS	
45-9-115. Criminal manufacture of imitation dangerous drug			10 YRS	
45-9-121. Criminal possession of toxic substances	MISDEMEANOR			
45-9-125. Continuing criminal enterprise				X
45-9-127. Carrying dangerous drugs on train	see penalty at 45-9-102			
45-9-132. Operation of unlawful clandestine laboratory			10 YRS	
Title 61 - Driving Under the Influence of Alcohol or Drugs (61-8-401)				
(first - third offense - 61-8-714)	MISDEMEANOR			
(fourth or subsequent offense - 61-8-731)			10 YRS	
Title 52, Chapter 3, Part 8 - Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act				
52-3-825. Penalties				
(1) failing to make a report, failing to disclose contents of case record or report	MISDEMEANOR			
(2)(a) abuse, sexual abuse or neglect		X		
(2)(b)(i) negligent abuse (first offense)	MISDEMEANOR			
(2)(b)(ii) negligent abuse (second or subsequent offense)		X		
(3)(a) exploiting in amount of \$1,000 or less	MISDEMEANOR			
(3)(a) exploiting in amount of \$1,000 or more		X		
Title 33, Chapter 1, Part 12 - Insurance Fraud Protection				
33-1-1211. Penalties.	MISDEMEANOR			
Title 53, Chapter 2, Part 1 - Social Services Institution, Administration of Public Assistance, General Provisions				
53-2-106. Penalty for misuse of public assistance information	MISDEMEANOR			
53-2-107. Fraudulent obtaining of public assistance treated as theft				